

DEMAND FOR LANDLORD TO FIX PREMISES AND LAWSUIT FOR DAMAGES

Introduction: The Arizona Residential Landlord and Tenant Act, or ARTLA (A.R.S. 33-1301), is the law covering most landlord-tenant disputes. The law requires tenants to notify landlords of problems and allow them an opportunity to fix the problem before the tenant takes certain actions. First, you must make the landlord aware of the problem. If the tenant or the tenant's guest was responsible for the damage, then they cannot complain that the landlord has not fixed the problem. Damages then are the responsibility of the tenant. If your landlord fails to make repairs, **DO NOT WITHHOLD YOUR RENT**. If you do this, the landlord will simply file to evict you for non-payment of rent. You must follow the law and provide the right types of notices **IN WRITING** while still paying your full rent on time.

Landlords' Duties: As a tenant, you have a right to safe and habitable housing. At a minimum, the landlord must provide a dwelling that meets the requirements of all local building and health codes. In Flagstaff and Coconino County (off reservation), this means complying with the Uniform Housing and Building Codes. Dwellings that are safety and health hazards may include those with faulty electrical systems, dangerous gas hook ups and lines, fire hazards, structural defects, or rodent and insect infestation, among others. If these problems are present and the landlord has failed to make repairs, then the landlord has most likely violated the "warranty of habitability" that is in each lease.

Even if there is not an immediate health and safety concern, landlords are obligated to make all necessary repairs in order to keep the dwelling in a livable condition. They must keep all common areas (shared with other tenants) clean and safe. They must keep all electrical, plumbing, sanitary, heating, ventilating, and other facilities in safe and working order. They must provide trash containers and provide for trash removal. Running water must be supplied along with reasonable amounts of hot water.

What Are My Basic Options as a Tenant? You have some basic choices. Read the specific instructions for each one before you act.

- 1. Ask the landlord to fix the problem.** Most landlords will work with you to fix legitimate problems. If they do not, you may need to use one or more of the following options.
- 2. Notify the landlord that you will terminate the rental agreement and move out if he or she does not repair the problem within a certain time period.** (Forms attached) For problems that seriously impact your health and safety, you may ask that the repairs be completed within five days. All other requests for repair require a minimum of ten days to fix the problems. (See the attached five and ten day Demand For Repairs letters.)
- 3. Self-Help:** (Forms attached) For minor problems, you can notify the landlord that if he or she does not fix the problem within ten days, you will have the problem fixed by a licensed contractor and deduct the costs from your next rent payment. This option is only for minor repairs that cost no more to fix than \$300 or half your monthly rent, whichever is greater. To take this option, your contractor (plumber, construction person, etc.) must

be licensed and must sign a Contractor's Lien Waiver (attached). This waiver is a simple, one-sentence paper that says the contractor will not claim a lien on the rental property if he or she is not paid. Send the attached Self-Help Notice that states your intent to make repairs. Specifically list what type of repairs are needed to make the dwelling livable. Hopefully, your landlord will make the repairs. If no repairs are made, on the eleventh day you may hire a licensed contractor (don't forget the lien waiver) and authorize them to make the repairs up to the maximum limit. All costs must be reasonable. After the repairs have been made, send the landlord the Self Help Notice of Completion of Repairs notifying the landlord of the repairs made, and attach a copy of the bill, marked paid. Attach the lien waiver signed by the contractor. You may then deduct the amounts expended by you, up to \$300 or half your monthly rent (whichever is greater), from your next month's rent.

4. Call the Building Inspector. The City or County Building Inspectors will inspect private dwellings for compliance with the local housing codes upon request, in particular when there are health and safety issues. Be aware that if the building is an extreme and serious health or safety risk, the dwelling could be condemned, and you could be forced to vacate immediately. In most cases, however, the landlord will be required to repair housing code violations within a certain period of time or face certain civil or criminal penalties. If the building is condemned and you are forced to relocate, you may have an action for significant damages against the landlord. The Flagstaff Building Inspector can be reached at 779-7610 and the Coconino County Building Inspectors at 226-2700. You may also contact the Coconino County Environmental Services regarding sanitary or other health risks at 226-2710.

5. Sue the landlord for your damages. (Forms attached) If the landlord refuses to repair your dwelling, forcing you to live in unfit conditions, you may sue the landlord for your damages. A Justice Court Complaint and Summons are included in this packet for that purpose. Damages cannot be greater than \$5,000 for suit in the Justice Court. If they exceed that amount, the complaint must be filed in the Superior Court. Be specific as to when the landlord received notice of the problem and how he or she has failed to fix the problem. Specifically list the types of problems and how they have interfered with your rights to fit and habitable housing.

List the specific damages you have suffered as a result of living in these conditions. Damages can include the difference between the rental price (assuming the dwelling had been fit and habitable) and the actual monthly value of the place with all of the problems since the date you notified the landlord. It can also include lost wages, moving expenses, property damages, medical expenses, costs related to condemnation, and in some cases emotional distress. In certain extreme cases, tenants may have a cause of action for negligence or consumer fraud.

6. Obtain a court order ordering landlord to fix the premises. If none of the above works, you may be forced to obtain an injunction ordering the landlord to fix the problem. This is a fairly complicated procedure that must be pursued in Superior Court. You should see a lawyer if you need to take this option. To obtain an injunction and

temporary restraining order, you are required to show the court that the landlord has violated her or his duties under the law by failing to make repairs necessary to provide fit and habitable housing. You must show that less drastic legal options (those listed above) are really inadequate. In the case of a tenant who wants to have the dwelling repaired and the costs of repairs exceed the self-help limit, the other remedies really are inadequate. A hearing in Superior Court will be held, and if you win the judge will order the landlord to make necessary changes or face contempt charges.

7. Obtain a court-ordered receivership. This is perhaps the most drastic remedy of all, used only in cases where no other remedy, including injunctions, can work. This is where a court appoints a professional property manager to take over the rental business, make necessary repairs, and collect rents and pay bills. It is essentially the Court taking over operation of the business. This may be appropriate in cases where management or owners have run off, the property has been abandoned, or everything else has been attempted to no avail.

What about Landlord Retaliation? Tenants are often concerned that, if they take any of the above options, the landlord will find ways to evict them. The law prohibits evictions that are really retaliations against the tenants' exercise of their rights to fit and habitable housing. For this reason, the eviction court WILL PRESUME (assume) that the eviction is retaliatory if, within the last six months, you have:

- . complained about conditions of your unit to a governmental agency (for example, building inspector, health officials), OR
- . joined a tenant organization.

You cannot use this retaliation defense if you are not current in your rent or if you caused the problems. If a court finds that the landlord is attempting to punish you because of your complaints or because you joined a tenant group, then you can request damages in the amount of two months' rent.